

LIMITED JURISDICTION COURTS COMMITTEE
September 24, 2003, Arizona State Courts Building

Members Present:

Honorable Michael Traynor, Chair
Honorable George Anagnost
Ms. Kathy Barrett
Ms. Faye Coakley
Mr. Frank Maiocco
Honorable Sherry Geisler
Honorable Linda Hale
Ms. Joan Harphant
Mr. Paul Thomas

Ms. Pamela Jones
Honorable John Kennedy
Honorable John Lamb
Honorable Michael Lester
Honorable R. Wayne Johnson
Honorable Kathy McCoy
Honorable Antonio Riojas, Jr.
Mr. James Scorza

Absent Members:

Honorable R.O. McDaniel
Honorable Judy Ferguson

Mr. Dale Poage
Mr. Theodore Jarvi, Esq.

Staff:

Ms. Lori Johnson, LJC staff
Mr. Todd Adkins
Ms. Carol Ashton
Mr. Michael Baumstark
Mr. David Benton
Mr. Doug Brooks
Mr. Eric Carlson
Ms. Ellen Crowley
Mr. Greg Eades
Ms. Agnes Felton
Ms. Page Gonzales

Ms. Jennifer Greene
Ms. Patience Huntwork
Mr. Paul Julien
Ms. Karen Kretschman
Mr. Robert Roll
Mr. Bob Schaller
Ms. Janet Scheiderer
Ms. Nancy Swetnam
Mr. David Withey
Ms. Amy Wood

Guests:

Ms. Kathleen Carey
Mr. C. Daniel Carrion
Ms. Janet Cornell
Mr. Christopher Hale
Mr. Eric Hunn

Mr. Bob James
Mr. Don Jacobson
Honorable Michael Jones
Ms. Esther Reeves

REGULAR BUSINESS:

1. **CALL TO ORDER**

The meeting was called to order at 10:07 AM by Judge Michael Traynor.

Introductions were made all around the table. The new committee members (Judge R. Wayne Johnson, Judge Kathy McCoy, and Mr. James Scorza) were introduced. Ms. Agnes Felton (Director, AOC Education Services Division) introduced Mr. Paul Julien.

2. APPROVAL OF PRIOR MEETING MINUTES

Motion: Motion was made and seconded to approve the 5/21/03 meeting minutes as presented. **Motion passed** unanimously, the 5/21/03 minutes will stand as presented. **LJC-03-08.**

3. EXECUTIVE SUBCOMMITTEE REPORT

Judge Traynor reported that the executive committee met once since the last LJC meeting. In this meeting they followed up on an item that was presented at a previous LJC meeting, the traffic citation log issue. Various formats for the citation log were discussed such as electronic and manual processes. The AOC understands there are a number of different ways to account for citations filed with the court and recognizes one way doesn't fit all, but it is agreed that all courts should have such a quality control process.

The Chief Justice visited the committee to address issues related to the FARE program and regarding the proposed Administrative Order that was being looked at, at that time. Copies of the Administrative Order have gone out to all courts and although it addresses some of the issues raised, it does not address all. Other issues discussed at the meeting are on today's agenda.

4. PENDING AND PROPOSED RULES UPDATE

Ms. Patience Huntwork gave the following update regarding the Court's next Rules Agenda on October 7th :

- The total global rewrite of the criminal rules of discovery is back on the agenda, probably for final adoption. After a year of consensus building on several controversial points among prosecutors, defense attorneys and crime labs.
- The Ring decision changed the capital sentencing rules dealing with death penalty cases. The rules were adopted on an emergency basis last year after the issuance of the Ring decision. They were adopted with a comment period to follow. Comments came in and are now on the agenda.
- The rule on victim's rights (that requires the judge to advise the victim of his or her rights and post certain information regarding victims rights in every courthouse) is on the agenda for final action.
- The court continued the matter of post conviction conditions of release, to allow Judge Anagnost time to work out some differences between prosecutors and defense counsel. Some differences have been worked out and are on the agenda for final adoption.
- The comments on the SCRAP Civil are on the agenda for final adoption. That body of rules was adopted on an emergency basis, so a comment period followed. Comments have been received and are on the agenda for consideration, so there may be changes to the SCRAP Civil rules.

- There is a new rule petition from Judge Colin Campbell that is intended to conform Maricopa County local rules to the Civil Traffic Rules, the SCRAP Criminal rules and the SCRAP Civil rules. There is no need for circulation, since this is a local rule and it could be adopted immediately on October 7th.
- The ACLU has filed a new petition (regarding the lack of warning to a criminal defendant that their admission of guilt may have adverse immigration consequences) which is a reprise of an earlier submitted rule, that was too controversial at the time. There will be a comment period on this petition and Ms. Huntwork suggested an extended comment period be required. Judge Traynor informed Ms. Huntwork that Ms. Eisenberg agreed that she would provide this committee an advance copy of the petition and did not. Further, AOC staff reminded Ms. Eisenberg of this promise on a few occasions.
- A provision of the discovery rules for limited jurisdiction courts provides that the prosecutor must provide disclosure to the defendant at the pre trial conference. (handout distributed) There are certain disclosure requirements that are key at the time of pretrial. Prosecutor, Sally Wells has expressed concerns that prosecutors often are not aware of the existence of cases initiated by traffic citation forms until the first pretrial conference. The Criminal Practice Committee of the State Bar discussed having a rule amended to direct limited jurisdiction courts to inform the prosecution of impending cases by a date certain. Since the committee realized they cannot write a rule directing courts to act in a certain way, a motion was made to approve the proposed rule as written. This was done with an understanding that a comment will be submitted by the committee requesting that the Supreme Court issue an Administrative Order (AO) directing courts to inform the appropriate prosecutorial agency of the existence of citation cases with sufficient time for the prosecutor to assemble the required discovery. It was further moved, that if the Supreme Court did not resolve the problem by AO by the time the amended rule was scheduled to be active, the recommendation will be that any amendment to current rule 1.5(c) be delayed. Ms. Huntwork asked Judge Traynor if she could work with LJC on this issue prior to October 7th. Judge Anagnost volunteered that the Rules Subcommittee will handle this issue.
- The survey results regarding the progress of experimental rule 10.2 (change of judge) were distributed. Jennifer Greene was present and added that the Court would be considering whether to continue the current version or to adopt the original AJC version (or another version) at the January rules agenda. Comments should be filed by December 1st.

5. FARE PROGRAM UPDATE

Nancy Swetnam gave a brief overview of the progress of the FARE program and reminded the committee that FARE is all about the enforcement of court orders, through TIP, TTEAP and other collection techniques. Ms. Swetnam reported that seven pioneer courts are working with AOC and Affiliated Computer Services (ACS) staff to improve the FARE processes and the notices.

It was emphasized that although the initial plan was to implement full FARE in the pioneer courts first and then make collection services available to other courts, the direction has changed so that while moving forward with implementing FARE in the pioneer courts (Tucson Municipal Court already has money starting to come in and the Showlow Municipal Court is being brought up) they are ready to provide special collection services (through ACS) to other courts. The special collection service options may include credit bureau reporting, skip tracing, wage garnishment, etc. Mr. Eric Hunn (ACS) described the various notices that will be used in the process. They are trying to develop a notice that is consistent statewide and it will be available in Spanish. Each court will have their variable business parameters personalized on the notices.

The \$7.00 general service fee will be applied to every citation that has a financial sanction, even if the defendant pays the same day they receive the ticket. Judge Lester asked how courts could go about contracting with ACS to provide some of the special collection services. Ms. Swetnam responded that the AOC is modifying the contract so that ACS can provide collection services to all Arizona courts.

Considerable discussion ensued over the various FARE and collection fees. Judge Anagnost asked when courts are expected to raise fines to include the FARE fee. Ms. Swetnam replied that the \$7.00 general service fee applies to all cases that carry a financial sanction effective the date the court comes into the FARE program. Judge Anagnost also inquired as to the authority for the FARE fees. Judge Traynor responded the Arizona Constitution gives authority to the Chief Justice to administer courts and the Chief Justice is doing so by establishing Administrative Orders (AO). Judge Kennedy asked if the \$7.00 fee is the only FARE fee that will be tacked onto cases. Ms. Swetnam responded that if it becomes necessary to refer a case to TTEAP, TIP or special collection services additional fees will be imposed and they are still being worked out as to whether they will be flat fees or percentage fees. Right now, they are suggesting a \$15.00 fee for referral to TIP and a \$25.00 fee for referral to TTEAP, but that is not final. The FARE fees will be included in an upcoming AO.

6. UPCOMING BUDGET ISSUES

Mr. Michael Baumstark briefed the committee on future court budgetary projections. He reported that this fiscal year may have at least a 425 million dollar deficit and 04 may have a deficit over one billion dollars. Contributing factors include statewide population growth and sluggish economic improvement. Mr. Baumstark reported on one time sweeps over 100 million dollars, the depletion of the rainy day fund, \$300 million in bonding and education spending borrowed to pay over time to help balance the budget. The Federal government gave Arizona \$307 million in state aid and this will help with the billion dollar deficit in fiscal year 04.

Mr. Baumstark mentioned some court cases that may impact the budget. He reported that as legislators filed a lawsuit against the Governor challenging her line item vetoes, if the Supreme Court rules against the Governor there is a potential for \$75 million, to the good. In another case, \$150 -200 million was withdrawn from dedicated education funds by the legislature to help balance the books. This matter is now before the Supreme Court and depending on the outcome, this money may need

to be reimbursed later. Last, there is an ACCHS case regarding payment for emergency costs for undocumented illegal aliens that may involve millions of dollars. Legislature leadership does not believe that raising taxes will be feasible. Paul Thomas asked about the status of HB 2533. Mr. Baumstark replied there is talk about revising or repealing it, possibly in special session.

7. PRIORITY OF OFFENDER PAYMENTS

Esther Reeves (Phoenix Municipal Court) reported that only a few items have been changed since the last review by this committee, such as addition of and definition of the FARE fees. Ms Reeves informed the committee that these items are still open to discussion. Kathy Barrett questioned (related to paragraph D.3) if the intent has changed on time payment fees on cases contracted at different times. Ms. Reeves replied that it was not the workgroups intention to make that change and the workgroup will reexamine that issue.

Janet Scheiderer (AOC) supplied that the Commission on Technology (COT) will be bringing recommendations to AJC regarding code standardization, business practice standardization and simplification of financial rules. COT has asked that LJC review this issue. They will ask to remove this item from the October AJC agenda to allow for LJC review.

Jim Scorza suggested the workgroup survey the courts in terms of what priority they are currently using. Judge Traynor suggested removing the new paragraph that was added regarding the FARE fees and rather, indicate that the FARE fees are going to be established by administrative order. Judge Traynor also clarified that not all FARE fees fit into the same category, so they don't all come next after Time Payment Fee. Some come proportionately with the fines.

Motion: Motion was made and seconded **to table this topic until the November LJC meeting.** Motion passed unanimously, this topic tabled to the 11/19/03 LJC agenda for action. **LJC-03-09.**

8. RFQ FOR CODE STANDARDIZATION

Karen Kretschman (AOC) gave a brief overview of RFQ 03-04 that was drafted with the goal to develop a wide pool of qualified vendors for consultations, recommendations, systems review etc. Ms. Kretschman explained that the RFQ was broadly drafted to alleviate the need for numerous individual contracts and to cover manual as well as automated processes. She reported that the package was sent to 52 known interested firms in March, 13 vendors responded and 12 of the 13 have been pre qualified to bid on future court projects in various different areas such as court systems, case management, criminal, civil, family and juvenile. These vendors have been notified of their prequalification and the AOC expects to send the consulting services contracts out next week.

The contracts are for two years and can be renewed for another two years if the user is satisfied with the vendor's performance. The RFQ was designed to allow any Arizona court to utilize the vendors services under this contract. This issue is important because one recommendation that will be made to AJC is that the limited jurisdiction court codes be standardized within a 12 month period of time. The AOC

hopes to get a qualified pool of consultants to choose from regarding this project.

Amy Wood (AOC) explained the various types of codes to be standardized such as event codes, calendar codes, financial codes, sentencing codes etc. Faye Coakley asked if courts will still have authority to maintain personalized codes. Ms. Wood suggested a system for sub-tiered codes may allow for some customization.

9. LEGISLATIVE SUBCOMMITTEE REPORT

Judge Lester gave a brief overview on the Legislative Subcommittee's meeting. David Benton (AOC) explained the legislative proposal process and defined the AOC staff involvement to this point. Mr. Benton emphasized that the proposals before the committee are still in draft format.

The following proposals were presented by Mr. Benton and Ms. Page Gonzales:

Proposal 04-01 - Small Claims Hearing Officers. This proposal impacts justice of the peace courts, would be handled as a county by county issue and would allow for compensation for small claims hearing officers. The compensation would be permissive and would be approved by the Presiding Judge. The local Board of Supervisors would provide the funding. It is intended this proposal would help courts to manage limited resources and to relieve heavy court dockets. Further this proposal would allow courts to establish standards/qualifications for hearing officers.

The issue of judicial productivity credits was brought up. Paul Thomas stated that he had previously researched the applicable statute and does not feel credits will be an issue. The question was also raised if a hearing officer could waive compensation. David Withey will research these issues. **Vote - 17 votes to include in judicial package. 1 vote not to include. RANKED 1st IN PRIORITY**

ARS 22 -126 - Justice Court Hearing Officers (Unofficial proposal). This item is currently being discussed by legislators who wish to hear the views of this committee. It would apply to rural counties and would establish the office of justice court hearing officers to address the issue of the shortage of pro tem justices of the peace. The language included within the proposal uses last year's (SB1031) language is a placeholder. The hearing officer would have same judicial powers/duties as the justice of the peace, with exceptions of jury trials, withdrawals of pleas, contested civil matters over \$5,000.00 and may not perform weddings. Upon request of a party (in a criminal case) the case would be reassigned to a justice of the peace. Appointments would be for 12 months and new judge orientation or testing would apply. Discussion was generated on why the hearing officers could not perform weddings. Ms. Gonzales asked if the committee wishes to support the proposal in concept. The committee supported the concept, but would like to be involved in drafting the language and would like to extend this concept to include Municipal Courts.

Proposal 04-04 - Orders of Assignment. This proposal gives the authority for courts to issue orders of assignment against a persons wages for court ordered payments (fines, fees, costs, sanctions, restitution etc.) This item came before the LJC earlier this year and has been pared down from 30+ pages to 12. The proposal originally stated the court "SHALL" issue an order of assignment and now says the court "MAY."

The intent was to make it permissive, not mandatory, although the statutes may not necessarily do that, as written. ARS 12-306 B & C require a court to enter an ex-parte assignment if a motion is filed.

Concerns were voiced that this process would be too cumbersome for court staff and for employers. Some felt it will be difficult for courts to schedule hearings and judges will not know what the person's (true) disposable earnings are. Ted Jarvi suggested the Chamber of Commerce be consulted as employers may be hit with several wage assignments at once. It was noted that the FARE program is already being implemented to improve court collections and compliance with court orders and that this proposal may need to be addressed after FARE is implemented. **Vote - 17 votes not to include** in the judicial package, 0 votes to include this proposal.

Proposal 04-05 - Mental Health Experts. This proposal changes from mandatory to permissive, the requirement that one of two mental health experts appointed by the court for a competency exam be a psychiatrist. Maricopa County frequently experiences a shortage in the availability of psychiatrists in Rule 11 cases, as they only have eight psychiatrists on their list at present. It is intended this proposal will allow for a reduction in jail time for defendants awaiting evaluation and facilitate more expeditious case processing. Ted Jarvi suggested that one psychologist must at least be a PhD level, otherwise the quality of the evaluation may be diminished to offset cost savings. Mr. Peter Kiefer (Maricopa County Superior Court) explained that cost is not so much the issue, as, at current they contract the same amount (\$300.00) for an evaluation whether it be by psychiatrist or psychologist. Mr. Benton reminded the committee that the judge still has discretion to order a psychiatrist. Ms. Kathleen Carey stated the public defenders office opposes this proposal. **Vote - 8 votes to include** in the judicial package. **9 votes - other** (include, but provide that if either side moved for the appointment of a psychiatrist, one would be appointed) 1 vote not to include. **RANKED 4th IN PRIORITY**

Proposal 04-08 - Forcible Entry and Detainers. The idea behind this proposal is to make the FD statute consistent with the recent civil appellate rule change and allow the justice court rather than the Superior Court to accept bonds and periodic rent payments in a forcible detainer appeal. Some members were not comfortable with monthly rental payments staying with the trial court while the matter was pending in Superior Court, particularly as there was question of lifting the stay in the event the monthly rental payments were not made. Judge Michael Jones (Maricopa County Superior Court) clarified that the monthly rental amount is actually part of the supersedeas bond and that someone stops paying rent, the case is instantly fatal and the trial court would lift the stay for a writ of restitution. **Vote - 13 votes to include** in the package. 1 vote not to include. **RANKED 2nd IN PRIORITY**

Proposal 04-11 - MVD Registration Holds. This proposal would expand the (TTEAP) authority to refuse vehicle registrations for delinquencies in paying restitution, fines, surcharges etc. The proposal as written, would be a tool for the FARE program, eliminates the \$200.00 minimum amount (owed to the court) threshold and includes criminal non Title 28 violations and parking violations as applicable for vehicle registration suspension. Ms. Gonzales stated the statute was broadened to include felonies upon request of the Probation Department. Concerns were addressed regarding the removal of "political subdivision" from paragraph A.1 and it's expansion in paragraph A.2. Some members expressed concern over using a traffic ticket enforcement program to collect (non Title 28) criminal fines. Many

members agreed however, the statute needs to be expanded to include local civil and criminal traffic ordinance violations. Judge Lamb moved to eliminate paragraph two. Motion seconded and passed.

Vote - 5 votes to include (with elimination of paragraph two) , **7 votes - other** (include, but limit it not to include criminal non-traffic, keep the removal of the \$200.00 threshold, keep the addition of parking tickets and clarify political subdivision). 5 votes not to include in the judicial package. **RANKED 3rd IN PRIORITY**

Proposal 04-12 - TIP On Location of Probation Absconder. This item proposes the utilization of the Tax Intercept Program (TIP) to assist probation departments in locating absconders. Under this proposal the Arizona Department of Revenue (DOR) will notify the court of current addresses, whether or not a tax refund is due. This is an issue of import to the FARE program and expands authority to include all tax filers. It is expected TIP inquiries will increase. It was explained there may be programming expenses for the DOR and for the courts. Committee members expressed concerns that “absconder” is not clearly defined, also in that the cost analysis and input from the DOR are pending. Some members expressed concerns about the intrusion of government. Judge Lester supplied that the Legislative Subcommittee’s suggestion was to expand the proposal to include not only probation absconders, but also to make the TIP location applicable to any criminal case if the court needs to locate a defendant for any reason.

Vote - 0 votes to include. 14 votes not to include in the package.

Proposal 04-13 - Deferred Retirement Option Plan (DROP). This proposal creates a DROP for Arizona State Retirement System (ASRS) members. The intent is to retain seasoned employees and it gives elected officials incentive to continue on after retirement. This item was proposed last year, but failed due to fiscal implications. Ms. Gonzales explained that Arizona currently has a (different) DROP statute in effect, however the ASRS is awaiting an authorization letter from the Internal Revenue Service before implementation. Ms. Gonzales explained that this plan is employee driven and makes the employee retire first whereas the other DROP does not. The current plan, however, does not cover elected officials. The current retirement contribution rate includes the cost for the current DROP. With this plan the contribution rate would go up. Ms Gonzales further supplied the ASRS opposes plan and the Committee on Probation passed it with a vote of 92%. Committee members discussed that this proposal may be seen as a policy issue, rather than a court issue. **Vote - 1 vote to include this proposal 9 votes not to include** in the judicial package. 7 votes - other (allow another group to champion this proposal as it is a policy issue)

10. UPDATING DATA IN CPOR BY HOLDER OF RECORD

Robert Roll (AOC) explained that court data entry errors or omissions regarding orders of protection and injunctions against harassment are causing problems for the holder of record and law enforcement. Currently, a large amount of CPOR electronic data does not match corresponding hard copy orders. The holder of record (sheriff’s office etc.) will not accept records if they do not match their hard copies. Only accepted records are available to law enforcement. Some of the data quality issues are: orders issued without parties associated, parties date of birth is blank or clearly in error, data shows orders served but not issued, etc.

The recommendation is to allow the holder of records to update fields in CPOR that they can currently update in NCIC. The original record in the court will not change, only the information at the holder of record (once it has left the court) will change. There will still be key fields that the holder will not be able to update and exception reports will be generated.

When asked if the holder of record will have the ability to delete a party, Mr. Roll replied that they will be able to delete parties. Paul Thomas volunteered that some courts may be uncomfortable with the holder changing the record without the hard copy. Mr. Roll explained that electronically generated DV forms should match exactly what is in CPOR, it is the handwritten orders that create a problem. Kathy Barrett remarked that she has concerns with allowing the integrity of the court order to be compromised by allowing another to change court information. Ted Jarvi suggested the holder of record should check with the court before correcting data.

Judge Traynor inquired about the time line for an answer to which Mr. Roll responded that if approved they would go into production January 1, 2004. Kathy Barrett and Pamela Jones will work with the AOC on a committee regarding this issue, other members interested in participating are urged to contact them.

Motion: Motion made and seconded **to table this topic** to the next LJC meeting. Motion passed unanimously, tabled to the 11/19/03 agenda for action. **LJC-03-10.**

11. ELECTRONIC DDS REPORTS

Bob Schaller (AOC) reported that the Defensive Driving Program (DDP) has completed the work required to provide automated delivery of the monthly defensive driving reports, the school and court directories and a monthly newsletter (when available). Courts will be able to access these reports via the DDP intranet page. The reports will be available as text files and as Excel files. Several court user suggestions and requests have been implemented to improve this process. Mr. Schaller clarified that courts may continue to request paper reports, if needed.

Motion: Motion was made and seconded **to approve implementation of the automated defensive driving monthly reports.** Motion passed unanimously. **LJC-03-11.**

12. CERTIFICATION AND DISCIPLINE CODE

Doug Brooks and J.R. Rittenhouse (AOC) distributed a revised handout and explained the proposed changes to ACJA code, 7-201 regarding certification procedures and the disciplinary process for the Confidential Intermediary Program, the Defensive Driving Program and the Fiduciary Program. Some of the changes include: a rewrite of Rule 1, added definitions, added compliance review provisions, certification process time limits, records retention provision etc. The proposed change is currently out for public comment and is available on the judicial department website. Ms. Rittenhouse advised that this matter will be going to the AJC.

Motion was made and seconded **to approve recommending that ACJA 7-201 be adopted as proposed.** Motion passed unanimously. **LJC-03-12.**

13. JURY MANAGEMENT CODE

Jennifer Greene (AOC) reported that the new trial jury management code section was recently approved, however, because of conflicts with recent legislation, the code must now be updated in order to conform. The legislation included major revisions to a number of statutes dealing with juror: service, excusal, term of service, exemption and pay.

Ms. Greene also stated that a criminal rule which requires courts that offer jury handbooks to have those books approved by the Supreme Court should be incorporated into the code, rather than being addressed by court rule. This code revision will be presented to the Committee on Superior Courts (COSC) and the AJC later this fall.

Motion: Motion was made and seconded **to approve ACJA code 5-203 revision as presented.** Motion passed unanimously. **LJC-03-13.**

14. LENGTHY TRIAL FUND UPDATE

Jennifer Greene reported that she has been working with two Lengthy Trial Fund workgroups to establish recommendations regarding the amount of the new lengthy trial fund fee and to which types of filings the fee should apply. This is being done because of recent legislation establishing the lengthy trial fund which is designed to pay extra compensation to jurors who serve on trials lasting more than ten days and who lose wages because of their jury service.

One workgroup is recommending an \$8.00 fee in Superior Court civil filings and the other workgroup has developed a set of guidelines, a claim form and a reimbursement request form to help jurors and jury commissioners. Ms. Greene stated that this issue is mainly a Superior Court issue and explained that this issue will be addressed by administrative order approving this fee which needs to be in place by January 1, 2004. The fund will be monitored to determine if the amount of the fee is adequate.

15. FORM IV ISSUES

Judge Traynor explained that Judge Ellie Finn raised issues regarding the form IV presented to the court at the initial appearance, particularly dealing with DV issues. Judge Traynor reported that although Judge Finn planned to

chair a committee to address the form's issues, she is not able to do so because of other judicial commitments. Judge Traynor announced that he will chair the committee and urges members to contact him if interested in helping with this project.

16. DOMESTIC VIOLENCE (DV) AND INJUNCTION FORMS

Bob James (Maricopa County Superior Court) briefed the committee on the history of the DV forms project and requested approval of two documents, the petition and the guide sheet. Mr. James explained that the two forms submitted do not require changes to current automation systems. Committee members suggested several wording changes, such as:

- Substitute a different term for “live-in” on both forms.
- Correct “order of protect” to “order of protection” in item # 1 on the guide sheet and perform spell check in both documents.
- Substitute “I need this order because” for “I need the court’s help because” on item number 4 of the petition.
- Add a “not sure” check box as a choice in item number 3 of the petition.
- Allow more space for the NCIC # on the petition.
- Correct item 5 of the petition to read, “...as stated in number 4 (not 3) the defendant....”
- Add instruction in the guide sheet to persons who already have a matter pending in Superior Court, to stop and check with the court before completing the paper.

Motion: Motion was made and seconded **to approve the petition and guide sheet**

with the amendments as suggested by the committee. Motion passed unanimously. **LJC-03-14.**

17. BOATING WHILE INTOXICATED TEST REFUSAL, ADMIN. ORDER

Judge Anagnost explained that recent legislation has made refusal to take a breath test for boating while intoxicated a civil offense, rather than a criminal offense and this creates a problem for courts, in that this offense now does not fall under any set of rules. Judge Anagnost has been working with staff at the AOC to draft an administrative order to give guidance on how this offense should be handled.

Karen Kretschman (AOC) supplied that the proposed administrative order was submitted to the Legal Department and they feel that since this order is not designed to be a permanent fix, this committee may want to follow up by reviewing the rule and the statute to see if revisions need to be made. Paul Thomas stated that no specific procedures regarding this issue have as yet been adopted in Mohave County and volunteered to help Judge Anagnost with this project.

Motion: Motion was made and seconded **to approve the draft Administrative Order with the caveat the committee will work on a possible rule or legislative resolution.** Motion passed unanimously. **LJC-03-15.**

18. FORMS/RULES SUBCOMMITTEE

RIGHT TO COUNSEL, RULES 4, 14

Judge Anagnost briefed the committee on the proposed Rule 28 petition regarding defendant right to counsel issues. Judge Anagnost explained that as crucial information is not always provided at the initial appearance (such as; whether the prosecutor will be recommending jail or probation or whether the defendant is eligible for court appointed counsel based on their financial statement) courts have been left to make the decision whether to appoint counsel, in the dark. Judge Anagnost remarked that often obsolete, non relevant jail court paperwork further confuses the issue.

This petition also makes changes related to proceedings at arraignment, regarding informing the defendant of their right to counsel and of preserving that right. Judge Anagnost asks the committee to support the rule 28 petition in concept.

Motion: Motion was made and seconded **to approve the petition concept in format, with continued work on the wording.** Motion passed unanimously. **LJC-03-16.**

CRIMINAL FORMS RULE PETITION

Judge Anagnost presented a rule 28 petition recommending deleting the forms from the Rules of Criminal Procedure. Judge Anagnost explained the petition was drafted as the forms are not mandated, since they were originally adopted to be guidelines courts have adopted their own versions and realistically the forms are not widely used.

Motion: Motion was made and seconded **to support the petition to delete the**

forms from the Rules of Criminal Procedure. Motion passed unanimously. **LJC-03-17.**

Rule 7.2 RELEASE PENDING APPEAL

Judge Anagnost summarized the rule 28 petition regarding right to release (Criminal Rule 7.2) as a rule that would allow the court (in appealed convictions that carry a sentence of incarceration) to possibly be subject to a hearing that would reconsider the conditions of release and put someone into custody while the appeal is pending. This contemplates; a specific hearing to evaluate why conditions occurred and why factual matters at trial arose and warranted this secondary evaluation, the need to take a record on that, the court to render a findings, and to allow for Superior Court review of the trial court determination.

Dan Lowrance (Maricopa County Public Defender's Office) stated that he sees problems in safeguarding the defendant's rights, particularly in misdemeanor cases, as not all of the automatic safeguards are in place as they are in felonies. Judge Anagnost summarized the views he has heard from various prosecutors and reported that the comments received on this issue have been incorporated into this petition. This matter was on an earlier Supreme Court agenda and was furthered for this discussion.

Ted Jarvi expressed that he is uncomfortable with this rule (as written) as it appears to open the door for punishment if filing an appeal and suggested it apply upon the finding of guilt. Judge Anagnost clarified this petition is in response to the concerns in the community regarding a defendant who is own recognizance, who becomes a threat at trial and yet the court is powerless to act.

Motion: Motion was made and seconded **to approve the rule 28 petition regarding Criminal Rule 7.2.** Motion passed with one dissenting vote. **LJC-03-18.**

WARRANTS/SUMMONS, RULE 3.2

Judge Anagnost explained that the draft rule 28 petition (to amend Criminal Rule 3.1 regarding warrants and Rule 3.4 regarding summons) is meant to clean up present wording and creates new text regarding a post arraignment warrant. This rule will allow a court to be able to issue a warrant when someone fails to appear or comply, without a prosecutor's complaint. Also, the rule clarifies that a summons can be mailed by first class mail rather than certified mail. If the mail is returned as undeliverable the court will be authorized to issue the probable cause warrant. Judge Anagnost concluded by asking members to review the materials and contact him before the next meeting with any comments or questions.

19. DEFENSIVE DRIVING SUBCOMMITTEE

Kathy Barrett stated there is no report at this time, however she has asked Bob Schaller to provide the courts with a current copy of the DDS eligible violation table. Mr. Schaller agreed to e-mail the chart to all courts.

20. STRATEGIC PLANNING SUBCOMMITTEE

Paul Thomas reported that strategic issues have been preempted by other topics at recent Executive Subcommittee meetings. He hopes to discuss strategic items at the next meeting however, and then will report to the committee.

21. OTHER BUSINESS:

CALL TO THE PUBLIC

Eric Carlson (AOC) announced that a draft court emergency response report will be soon be distributed. He urged members to review the document carefully and reply with any comments or suggestions.

Dori Littler (AOC) distributed a draft of the Intercounty Courtesy Transfer Code (ACJA section 6-211) which is scheduled to go before AJC in December. Although LJC does not need to officially act on this code section, Ms. Littler welcomes any comments members may wish to make, since a small population of domestic violence cases may be affected (if they request to transfer their probation supervision from one county to another) by this section. Comments should be sent to Ms. Littler by October 17, 2003.

Meeting adjourned at 4:20 by Judge Michael Traynor

Respectfully submitted,

Lori Johnson
Staff to the LJC